

EXHIBIT 11.1

TRIBAL CAP CONTRACT AMENDMENT

Contract No. SANCARLOSAPI21180A  
Amendment No. 2

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY

CENTRAL ARIZONA PROJECT  
INDIAN WATER DELIVERY CONTRACT  
BETWEEN THE UNITED STATES AND THE SAN CARLOS APACHE TRIBE

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Contract No. SANCARLOSAP121180A  
Amendment No. 2

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY

CENTRAL ARIZONA PROJECT  
INDIAN WATER DELIVERY CONTRACT  
BETWEEN THE UNITED STATES AND THE SAN CARLOS APACHE TRIBE

1. PREAMBLE: THIS AMENDMENT NO. 2, made this 29th day of  
April 1999, hereinafter called "Amendment No. 2," to  
Contract No. SANCARLOSAP121180A, as amended, (Tribal CAP Water Delivery Contract) or  
(Contract), in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts  
amendatory thereof and supplementary thereto; the Boulder Canyon Project Act dated  
December 21, 1928 (45 Stat. 1057) 43 USC § 614 et seq.; the Colorado River Basin Project Act  
dated September 30, 1968, as amended, (82 Stat. 885) 43 USC § 1501 et seq.; the San Carlos  
Apache Tribe Water Rights Settlement Act of 1992, as amended (San Carlos Settlement Act);  
and the various authorities and responsibilities of the Secretary of the Interior, hereinafter called  
"Secretary," in relation to Indians and Indian tribes as contained in Title 25 USC and 43 USC §  
1457; between the UNITED STATES OF AMERICA, hereinafter called "United States," and the  
SAN CARLOS APACHE TRIBE, hereinafter called "Tribe," located on the San Carlos Apache  
Reservation, Arizona, sometimes collectively called "Parties;"

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

2.1 WHEREAS, Amendment No. 1 to the Contract, executed on January 29, 1999,  
obligated the Secretary to make available to the Tribe all of the water referred to in subsection  
(f)(2) of Section 2 of the Ak-Chin Water Settlement Act which is not required for delivery to the  
Ak-Chin Indian Reservation under that Act, and authorized the Tribe to lease such water

1 pursuant to terms and conditions set forth in subsection 3711(d) of the San Carlos Settlement  
2 Act;

3 2.2 WHEREAS subsection 3704(c) of the San Carlos Settlement Act provides, among  
4 other things, that the Secretary shall reallocate, for the exclusive use of the Tribe, an annual  
5 entitlement to fourteen thousand six hundred sixty-five (14,665) acre-feet of M&I Water which  
6 the Secretary previously allocated to Phelps Dodge Corporation; and

7 2.3 WHEREAS subsection 3706(b)(1) of the San Carlos Settlement Act requires,  
8 among other things, the Secretary to amend the Tribal CAP Water Delivery Contract to include  
9 therein the obligation of the United States to deliver to the Tribe, upon the same terms and  
10 conditions set forth in the Tribal CAP Water Delivery Contract, water from the source described  
11 in subsection 3704(c) of the San Carlos Settlement Act; *Provided, however,* That pursuant to  
12 subsection 3706(b)(1) of the San Carlos Settlement Act, the cost to the United States to meet the  
13 Secretary's obligation to design and construct new facilities to deliver Water shall not exceed the  
14 cost of construction of the delivery and distribution system for twelve thousand seven hundred  
15 (12,700) acre-feet of CAP Water originally allocated to the Tribe;

16 NOW THEREFORE, in consideration of the mutual and dependent covenants herein, it is  
17 agreed by the Parties hereto as follows:

18 3. PURPOSE OF AMENDMENT NO. 2: This Amendment No. 2 modifies the Tribal CAP  
19 Water Delivery Contract to incorporate certain provisions required by the San Carlos Settlement  
20 Act.

21 4. AMENDMENT OF CONTRACT:

22 4.1 Amendment No. 1 to the Contract is hereby rescinded.

23 4.2 Subarticles 3.23 through 3.25 are hereby added:

24 3.23 "Excess Ak-Chin Water" shall mean Project Water  
25 allocated to the Ak-Chin Indian Community and determined to be  
26 available by the Secretary in excess of the quantity required for

1 delivery to the Ak-Chin Indian Community, in satisfaction of the  
2 Secretary's water delivery obligations pursuant to paragraph (f),  
3 subsection 2, of Section 2 of the Ak-Chin Indian Community  
4 Water Rights Act of October 19, 1984 (98 Stat. 2698).

5 3.24 "Tribe," or "San Carlos Apache Tribe," shall mean a tribe  
6 of Apache Indians organized under section 16 of the Indian  
7 Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476),  
8 and duly recognized by the Secretary.

9 3.25 "CAP Water" as used in this Amendment No. 2 shall mean  
10 Project Water as defined in subarticle 3.8 of the Contract.

11 4.3 In each instance in which the term "Contractor" is used in the Contract, it is  
12 hereby replaced by the term "Tribe."

13 4.4 Subarticle 4.2 of the Contract is hereby deleted and the following substituted in  
14 lieu thereof:

15 4.2 Term of Contract: This Contract shall become effective upon its  
16 execution and shall remain in effect through December 31, 2100; *Provided*, That  
17 this Contract may be renewed upon written request by the Tribe upon terms and  
18 conditions of renewal to be agreed upon not later than one year prior to the  
19 expiration of this Contract.

20 4.5 Subarticle 4.3(e) of the Contract is hereby deleted and the following substituted in  
21 lieu thereof:

22 (e) The Tribe shall not sell or permit the sale or other  
23 disposition of any Project Water for use outside the Tribe's Reservation except:

24 (1) The Tribe is hereby authorized to enter into Project Water  
25 lease agreements or options to lease Project Water to which the Tribe is entitled  
26 under this Contract, as amended, within Maricopa, Gila, Graham, Greenlee, Pinal

1 and Pima Counties, for terms not exceeding one hundred (100) years, and to  
2 renew such leases; *Provided*, That all conditions in subsection 3711(b)(1) of the  
3 San Carlos Settlement Act have been met; and

4 (2) The United States shall be a party to all lease agreements,  
5 amendments thereto, or options to lease Project Water entered into pursuant to  
6 this Contract; and

7 (3) The United States shall deliver the Tribe's Project Water to  
8 the Tribe's lessees as provided in the Project Water lease agreements; *Provided*,  
9 however, That the Secretary shall not be obligated to make such deliveries if, in  
10 the Secretary's judgment, delivery of water to the lessees or the schedule of  
11 deliveries to the lessees would limit deliveries of CAP Water under:

12 (a) existing CAP Water delivery contracts or  
13 subcontracts having terms of at least 50 years;

14 (b) future CAP Water delivery contracts or  
15 subcontracts, having terms of at least 50 years, for the 65,647 acre-feet of M&I  
16 Water which was not contracted for by the original allottees under the Secretarial  
17 water allocation decision published in the Federal Register on March 24, 1983;  
18 and

19 (c) existing contracts in which CAP Water is mandated  
20 to be delivered pursuant to statutory obligations;  
21 to a degree greater than would deliveries to the Tribe; *Provided*, That this  
22 subarticle shall not apply to leases which the Tribe may enter into with the Phelps  
23 Dodge Corporation, the City of Scottsdale, or the Town of Carefree; and

24 (4) The Tribe may exchange Project Water and may change times and  
25 places of delivery of Project Water, subject to the approval of the Secretary.

26 4.6 Subarticle 4.5 of the Contract is hereby deleted and the following is substituted in

lieu thereof:

4.5 Delivery Entitlements and Obligations.

(a) The United States or the Operating Agency shall deliver to the Tribe, annually, under this Contract, up to:

(1) 12,700 acre-feet of Project Water allocated to the Tribe in accordance with the Secretarial notice of December 1, 1980, 45 FR 81265;

(2) All of the Excess Ak-Chin Water, which is up to thirty-three thousand and three hundred (33,300) acre-feet in a normal year; and

(3) 14,665 acre-feet of M&I Water which the Secretary previously allocated to the Phelps Dodge Corporation in the Notice of Final Water Allocations to Indians and Non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 F.R. 12446 et seq.)

(b) The water referred to in this subarticle shall retain the same priority as it had before it was allocated or reallocated to the Tribe under the San Carlos Settlement Act.

4.7 Subarticle 4.11 of the Contract, Exchange Water, is hereby amended by adding the following additional paragraph:

The Secretary shall, in consultation with the Tribe, enter into agreements necessary to permit the Tribe to exchange all or part of the water available to it under this Contract.

4.8 The existing text of subarticle 4.9 of the Contract, Priority in Time of Shortages, is hereby designated as subarticle 4.9 (a), and subarticles 4.9 (b) and 4.9 (c) are hereby added:

(b) Excess Ak-Chin Water delivered pursuant to this Contract shall retain the priority such water held prior to being reallocated under the San Carlos Settlement Act; and

1 (c) Section 2(c) of the Ak-Chin Act defines "time of shortage" of  
2 Colorado River water available to the Central Arizona Project. That definition is  
3 applicable to determining the "time of shortage" for the Excess Ak-Chin Water  
4 available to the Tribe under this Amendment No. 2.

5 PAYMENT OF COSTS:

6 5.1 Subarticle 6(a) of the Contract is hereby deleted and the following is substituted in  
7 lieu thereof:

8 (a) Except as provided in the San Carlos Settlement Act  
9 and this Contract, repayment of construction costs associated with  
10 the Tribe's Project Water shall be subject to the provisions of 43  
11 U.S.C. 1542 and 25 U.S.C. 386a.

12 5.2 Article 6 of the Contract is hereby amended by adding subarticles 6(e), 6(f), and  
13 6(g) after subarticle 6(d):

14 (e) Water service capital charges, municipal and  
15 industrial subcontract charges or any other charges or payments for  
16 CAP Water other than OM&R costs shall be nonreimbursable to  
17 the extent provided in the San Carlos Settlement Act.

18 (f) The United States shall not impose upon the Tribe  
19 the OM&R charges described and set forth in Article 6 of the  
20 Tribal CAP Water Delivery Contract or any other charge with  
21 respect to CAP Water delivered or required to be delivered to the  
22 lessee or lessees of the options to lease or leases herein authorized.

23 (g) The Tribe shall not be required to pay OM&R costs  
24 for CAP Water under this Contract for which the Tribe has no  
25 delivery system through which to deliver such water, or for which  
26 the Tribe has not placed a delivery order pursuant to subarticle 4.6



of this Contract.

6. NEW FACILITIES: The Secretary shall design and construct new facilities to deliver the water that is subject to this Contract in accordance with the San Carlos Settlement Act.

7. CONTROLLING TERMS AND CONDITIONS:

7.1 Except as expressly provided in this Amendment No. 2, the terms and provisions of the Contract shall remain in full force and effect. In the event any of the terms and conditions of this Amendment No. 2 and the Contract conflict, this Amendment No. 2 shall control.

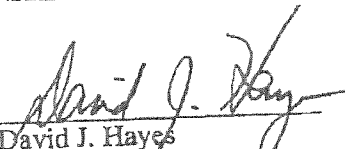
7.2 This Amendment No. 2 will become effective on the "Enforceability Date" set forth in paragraph 22.4.1 of the San Carlos Apache Tribe Water Rights Settlement Agreement.


IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 2 the day and year above written.

LEGAL REVIEW & APPROVAL:

THE UNITED STATES OF AMERICA

By:

  
David J. Hayes  
Acting Deputy Secretary  
Department of the Interior

  
Field Solicitor  
Phoenix, Arizona

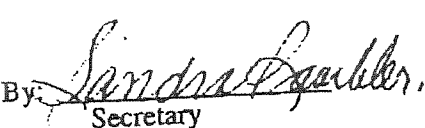
SAN CARLOS APACHE INDIAN TRIBE

ATTEST:

By:

  
Chairman

By:

  
Secretary

Contract No. SANCARLOSAPI21180A  
Amendment No. 3

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY

CENTRAL ARIZONA PROJECT  
INDIAN WATER DELIVERY CONTRACT  
BETWEEN THE UNITED STATES AND THE SAN CARLOS APACHE TRIBE

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Contract No. SANCARLOSAP121180A  
Amendment No. 3

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY

CENTRAL ARIZONA PROJECT  
INDIAN WATER DELIVERY CONTRACT  
BETWEEN THE UNITED STATES AND THE SAN CARLOS APACHE TRIBE

1. PREAMBLE: THIS AMENDMENT NO. 3, made this \_\_\_\_ day of \_\_\_\_\_, 1999, hereinafter called "Amendment No. 3," to Contract No. SANCARLOSAP121180A, as amended, (Tribal CAP Water Delivery Contract) or (Contract), in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto; the Boulder Canyon Project Act dated December 21, 1928 (45 Stat. 1057) 43 U.S.C. § 614 et seq.; the Colorado River Basin Project Act dated September 30, 1968, as amended, (82 Stat. 885) 43 U.S.C. § 1501 et seq.; the San Carlos Apache Tribe Water Rights Settlement Act of 1992, as amended (San Carlos Settlement Act); and the various authorities and responsibilities of the Secretary of the Interior, hereinafter called "Secretary," in relation to Indians and Indian tribes as contained in Title 25 U.S.C. and 43 U.S.C. § 1457; between the UNITED STATES OF AMERICA, hereinafter called "United States," and the SAN CARLOS APACHE TRIBE, hereinafter called "Tribe," located on the San Carlos Apache Reservation, Arizona, both sometimes collectively called "Parties;"

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

2.1 WHEREAS, Amendment No. 1 to the Contract, executed on January 29, 1999, obligated the Secretary to make available to the Tribe all of the water referred to in subsection (f)(2) of Section 2 of the Ak-Chin Indian Community Water Rights Settlement Act of October 19, 1984, which is not required for delivery to the Ak-Chin Indian Reservation under that act, and authorized the Tribe to lease such water pursuant to terms and conditions set forth in subsection 3711(d) of the

1 San Carlos Settlement Act;

2 2.2 WHEREAS subsections 3704(a), (c) and (d) of the San Carlos Settlement Act  
3 provide, among other things, that the Secretary shall reallocate, for the exclusive use of the Tribe,  
4 all of the Excess Ak-Chin Water and annual entitlements to fourteen thousand six hundred sixty-five  
5 (14,665) acre-feet of M&I Water which the Secretary previously allocated to the Phelps Dodge  
6 Corporation, and to three thousand four hundred and eighty (3,480) acre-feet of M&I Water which  
7 the Secretary previously allocated to the city of Globe, Arizona, in the Notice of Final Water  
8 Allocations to Indian and Non-Indian Water Users and Related Decisions, dated March 24, 1983  
9 (48 FR 12466 et seq.);

10 2.3 WHEREAS subsection 3706(b)(1) of the San Carlos Settlement Act requires, among  
11 other things, the Secretary to amend the Tribal CAP Water Delivery Contract to include therein the  
12 obligation of the United States to deliver to the Tribe, upon the same terms and conditions set forth  
13 in the Tribal CAP Water Delivery Contract, water from the source described in subsections 3704(a),  
14 (c) and (d) of the San Carlos Settlement Act; *Provided, however,* That pursuant to subsection  
15 3706(b)(1) of the San Carlos Settlement Act, the cost to the United States to meet the Secretary's  
16 obligation to design and construct new facilities to deliver water shall not exceed the cost of  
17 construction of the delivery and distribution system for twelve thousand seven hundred (12,700)  
18 acre-feet of CAP Water originally allocated to the Tribe;

19 2.4 WHEREAS, Amendment No. 2 was executed by the Parties on April 29, 1999, to  
20 provide for the obligation of the United States to deliver to the Tribe water from the source described  
21 in subsection 3704(c) of the San Carlos Settlement Act; and

22 2.5 WHEREAS, after execution of Amendment No. 2, the Parties determined that certain  
23 technical corrections and modifications were required in the Amendment, and that it was desirable  
24 to further amend the Tribal CAP Water Delivery Contract to provide for such corrections and  
25 modifications;

26 NOW THEREFORE, in consideration of the mutual and dependent covenants herein, it is

1 agreed by the Parties hereto as follows:

2 3. PURPOSE OF AMENDMENT NO. 3: This Amendment No. 3 modifies the Tribal CAP  
3 Water Delivery Contract to incorporate certain provisions required by the San Carlos Settlement Act  
4 and to make certain technical corrections and modifications to Amendment No. 2.

5 4. REALLOCATION OF CAP WATER: The following CAP water allocations are hereby  
6 reallocated to the Tribe:

7 (a) All of the water referred to in subsection (f)(2) of Section 2 of the Act of  
8 October 19, 1984 (98 Stat. 2698) which is not required for delivery to the Ak-Chin Indian  
9 Reservation under that Act (Ak-Chin Water) as provided in Section 3704(a) of the San Carlos  
10 Settlement Act;

11 (b) All of the water referred to in subsection 3704(c) of the San Carlos Settlement Act,  
12 which is 14,665 acre-feet of water per year from the Central Arizona Project having a CAP  
13 municipal and industrial priority, which the Secretary previously allocated to the Phelps Dodge  
14 Corporation in the Notice of Final Water Allocations to Indian and Non-Indian Users and Related  
15 Decisions, dated March 24, 1983 (48 FR 12466 et seq.); and

16 (c) Three thousand four hundred and eighty (3,480) acre-feet of water from the Central  
17 Arizona Project having a CAP M&I priority, which the Secretary previously allocated to the city of  
18 Globe, Arizona, in the Notice of Final Water Allocations to Indian and Non-Indian Water Users and  
19 Related Decisions, dated March 24, 1983 (48 FR 12466 et seq.).

20 5. AMENDMENT OF CONTRACT:

21 5.1 Amendments No. 1 and 2 to the Contract are hereby rescinded.

22 5.2 The following definitions are hereby added to the Contract as Subarticles 3.23  
23 and 3.24:

24 3.23 "Tribe," or "San Carlos Apache Tribe," shall mean a tribe of  
25 Apache Indians organized under section 16 of the Indian  
26 Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476),

and duly recognized by the Secretary.

3.24 "CAP Water" as used in this Amendment No. 3 shall mean

Project Water as defined in subarticle 3.8 of the Contract.

5.3 In each instance where the term "Contractor" is used in the Contract, it is hereby replaced by the term "Tribe."

5.4 Subarticle 4.2 of the Contract is hereby deleted and the following substituted in lieu thereof:

4.2 Term of Contract: This Contract shall become effective upon its execution and shall remain in effect through December 31, 2100; *Provided*, That this Contract may be renewed upon written request by the Tribe upon terms and conditions of renewal to be agreed upon not later than one year prior to the expiration of this Contract.

5.5 Subarticle 4.3(e) of the Contract is hereby deleted and the following substituted in lieu thereof:

(e) The Tribe shall not sell or permit the sale or other disposition of any Project Water for use outside the Tribe's Reservation except:

(1) The Tribe is hereby authorized to enter into Project Water lease agreements or options to lease Project Water to which the Tribe is entitled under this Contract, as amended, within Maricopa, Gila, Graham, Greenlee, Pinal, and Pima Counties, for terms not exceeding one hundred (100) years, and to renew such leases; *Provided*, That all conditions in subsection 3711(b)(1) of the San Carlos Settlement Act have been met;

(2) The United States shall be a party to all lease agreements, amendments thereto, or options to lease Project Water entered into pursuant to this Contract;

(3) The United States shall deliver the Tribe's Project Water to the

1 Tribe's lessees as provided in the Project Water lease agreements; *Provided,*  
2 *however,* That the Secretary shall not be obligated to make such deliveries if, in the  
3 Secretary's judgment, delivery of water to the lessees or the schedule of deliveries  
4 to the lessees would limit to a degree greater than would deliveries to the Tribe,  
5 deliveries of CAP Water under:

6 (a) existing CAP Water delivery contracts or subcontracts having terms  
7 of at least 50 years;

8 (b) future CAP Water delivery contracts or subcontracts, having terms of  
9 at least 50 years, for the 65,647 acre-feet of M&I Water which was not contracted for  
10 by the original allottees under the Secretarial water allocation decision published in  
11 the Federal Register on March 24, 1983; and

12 (c) existing contracts in which CAP Water is mandated to be delivered  
13 pursuant to statutory obligations.

14 (4) Except for leases which the Tribe may enter into with Scottsdale,  
15 Carefree, or the Phelps Dodge Corporation, the terms and conditions of Exhibit 11.3  
16 to the San Carlos Apache Tribe Water Rights Settlement Agreement shall be  
17 included in all water leases; and

18 (5) The Tribe may exchange Project Water and may change times and  
19 places of delivery of Project Water, subject to the approval of the Secretary.

20 5.6 Subarticle 4.5 of the Contract is hereby deleted and the following is substituted in lieu  
21 thereof:

22 4.5 Delivery Entitlements and Obligations. Subject to the provisions of  
23 this Contract, the United States or the Operating Agency shall deliver to the Tribe,  
24 annually, under this Contract, and the Tribe shall be entitled to the annual delivery  
25 of, the following quantities of Project Water:

26 (a) 12,700 acre-feet of Project Water allocated to the Tribe in accordance

1 with the Secretarial notice of December 1, 1980, 45 FR 81265;

2 (b) All of the water referred to in subsection (f)(2) of Section 2 of the Act  
3 of October 19, 1984 (98 Stat. 2698) which is not required for delivery to the Ak-Chin  
4 Indian Reservation under that Act;

5 (c) 14,665 acre-feet of M&I Water which the Secretary previously  
6 allocated to the Phelps Dodge Corporation in the Notice of Final Water Allocations  
7 to Indians and Non-Indian Water Users and Related Decisions, dated March 24, 1983  
8 (48 FR 12446 et seq.); and

9 (d) 3,480 acre-feet of M&I Water which the Secretary previously  
10 allocated to the city of Globe, Arizona in the Notice of Final Water Allocations to  
11 Indians and Non-Indian Water Users and Related Decisions, dated March 24, 1983  
12 (48 FR 12446 et seq.).

13 5.7 Subarticle 4.9 of the Contract, Priority in Time of Shortages, is hereby deleted and  
14 the following is substituted in lieu thereof:

15 4.9 Priority in Time of Shortage.

16 (a) The priority of the water referred to in subarticle 4.5(a) of this  
17 Contract shall be determined as follows. In Time of Shortage, deliveries of Project  
18 Water to miscellaneous and non-Indian agricultural uses will have been terminated;  
19 available Project Water shall be delivered to Indian contractors (including the Tribe)  
20 and to non-Indian contractors for municipal and industrial uses according to the  
21 following formula:

22  $IP = I / (I + MI)$  where:

- 23 - IP is the Indian Share of Project Water,  
24 - I is the Project Water used on Indian lands during the most recent  
25 calendar year which was not a Time of Shortage, up to a limit of  
26 309,810 acre feet, less ten (10%) percent of the amount allocated to



1 Indian Contractors for agricultural purposes; *Provided*, that for the  
2 purposes of this formula, such ten (10%) percent reduction shall not  
3 operate to reduce the amount of Project Water used for Indian  
4 agricultural purposes to less than ninety (90%) percent of the Indian  
5 agricultural allocation. (Included in I is any water delivered under a  
6 Substitute Water Contract; *Provided*, that where substitutions occur  
7 at a ratio greater than one-to-one, the ratio shall be considered as if it  
8 were one-to-one for the purposes of this section.)

9 MI is the aggregate Project Water used by Subcontractors for  
10 municipal and industrial purposes during the most recent calendar  
11 year which was not a Time of Shortage up to a limit of 510,000 acre  
12 feet. (Excluded from MI is Project Water obtained under a Substitute  
13 Water Contract.)

14 The non-Indian M&I water supply in Time of Shortage shall be the  
15 difference between Project Water and IP.

16 (b) For purposes of delivery in times of shortage, Ak-Chin Water  
17 delivered pursuant to this Contract shall retain the priority such water held prior to  
18 being reallocated to the Tribe. Section 2(c) of the Ak-Chin Indian Community  
19 Water Rights Settlement Act of October 19, 1984, defines "time of shortage" of  
20 Colorado River water available to the Central Arizona Project. That definition is  
21 applicable to determining the "Time of Shortage" for the Ak-Chin Water available  
22 to the Tribe under this Amendment No. 3.

23 (c) For purposes of delivery in times of shortage, the water referred to in  
24 subarticles 4.5(c) and (d) of this Contract shall retain the same priority as it had  
25 before it was reallocated to the Tribe.

26 5.8 Subarticle 4.11 of the Contract, Exchange Water, is hereby amended by adding the

1 following additional paragraph:

2 The Secretary shall, in consultation with the Tribe, enter into agreements necessary  
3 to permit the Tribe to exchange all or part of the water available to it under this  
4 Contract.

5 5.9 Subarticle 6(a) of the Contract is hereby deleted and the following is substituted in  
6 lieu thereof:

7 (a) Except as provided in the San Carlos Settlement Act and this  
8 Contract, repayment of construction costs associated with the Tribe's Project Water  
9 shall be subject to the provisions of 43 U.S.C. 1542 and 25 U.S.C. 386a.

10 5.10 Article 6 of the Contract is hereby amended by adding subarticles 6(e), 6(f), and 6(g)  
11 after subarticle 6(d):

12 (e) Water service capital charges, municipal and industrial subcontract  
13 charges, or any other charges or payments for CAP Water other than OM&R costs  
14 shall be non-reimbursable to the extent provided in the San Carlos Settlement Act.

15 (f) The United States shall not impose upon the Tribe the OM&R charges  
16 described and set forth in Article 6 of the Tribal CAP Water Delivery Contract or any  
17 other charge with respect to CAP Water delivered or required to be delivered to the  
18 lessee or lessees of the options to lease or leases herein authorized.

19 (g) The Tribe shall not be required to pay OM&R costs for CAP Water  
20 under this Contract for which the Tribe has no delivery system through which to  
21 deliver such water, or for which the Tribe has not placed a delivery order pursuant  
22 to subarticle 4.6 of the Contract.

23 6. NEW FACILITIES: The Secretary shall design and construct new facilities to deliver the  
24 water that is subject to this Contract in accordance with the San Carlos Settlement Act.

25 7. CONTROLLING TERMS AND CONDITIONS:

26 7.1 Except as expressly provided in this Amendment No. 3, the terms and provisions of

1 the Contract shall remain in full force and effect. In the event any of the terms and conditions of this  
2 Amendment No. 3 and the Contract conflict, this Amendment No. 3 shall control.

3 7.2 This Amendment No. 3 will become effective on the "Enforceability Date" set forth  
4 in paragraph 22.4.1 of the San Carlos Apache Tribe Water Rights Settlement Agreement.

5  
6 IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 3 the day  
7 and year above written.

8 LEGAL REVIEW AND APPROVAL:

THE UNITED STATES OF AMERICA

9  
10  
11 By: [Signature]  
12 Field Solicitor

By: [Signature]  
Robert W. Johnson,  
Regional Director  
Lower Colorado Region  
Bureau of Reclamation

13  
14  
15 ATTEST:

SAN CARLOS APACHE INDIAN TRIBE

16  
17  
18 By: [Signature]  
19 Secretary

By: [Signature]  
Tribal Administrator